

**SECOND NOTICE
OF PROPOSED MODIFICATIONS
AGENCY FEE REGULATIONS (SECTION 32992)**

Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the Public Employment Relations Board (PERB) is providing this Second Notice of Proposed Modifications to proposed regulations that were the subject of a public hearing on February 8, 2007. These proposed modifications are in response to public comments received regarding the initial rulemaking proposals.

The proposed modifications (see attached) affect only the following section:

32992. Notification of Nonmember.
[subsection b]

The proposed text, as published on December 1, 2006, showed new language in **bold**, and deletions by use of strikethrough (~~strikethrough~~). New language in the proposed revisions is in ***bold italics***.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed changes. Please limit any comments to the proposed modifications attached to this notice. The written comment period commences on April 24, 2007 and closes at 5:00 p.m. on May 18, 2007. Submit written comments to:

Les Chisholm, Division Chief
Office of the General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814
FAX: (916) 327-6377
E-mail: LChisholm@perb.ca.gov

Any questions regarding the proposed action or the substance of the proposed regulations should be directed either to Les Chisholm or to:

Tami R. Bogert, General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814
(916) 327-8381

New language in the proposed revisions is in ***bold italics***.

PROPOSED MODIFICATIONS

32992. Notification of Nonmember.

(a) **The exclusive representative shall provide annual written notice to each** ~~Each~~ nonmember who will be required to pay an agency fee. ~~shall annually receive written notice from the exclusive representative of~~ **The notice shall include:**

(1) The amount of the **exclusive representative's dues and the** agency fee ~~which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;~~

(2) **The percentage of the agency fee amount that is attributable to chargeable expenditures and the basis for this calculation;** ~~The basis for the calculation of the agency fee; and~~

(3) ~~A procedure for appealing all or any part of the agency fee.~~ **The amount of the agency fee to be paid by a nonmember who objects to the payment of an agency fee amount that includes nonchargeable expenditures (hereinafter referred to as an "agency fee objector"); and**

(4) **Procedures for (A) objecting to the payment of an agency fee amount that includes nonchargeable expenditures and (B) challenging the calculation of the nonchargeable expenditures.**

(b) *(1) The calculation of the chargeable and nonchargeable expenditures will be based on an audited financial report, and the notice will include either a copy of the audited financial report used to calculate the chargeable and nonchargeable expenditures or a certification from the independent auditor that the summarized chargeable and nonchargeable expenditures contained in the notice have been audited and correctly reproduced from the audited report, or*

(2) the calculation of the chargeable and nonchargeable expenditures may be based on an unaudited financial report if the exclusive representative's annual revenues are less than \$50,000 and a nonmember is afforded a procedure sufficiently reliable to ensure that a nonmember can independently verify that the employee organization spent its money as stated in the notice ~~All such calculations shall be made on the basis of an independent audit that shall be made available to the nonmember.~~

(c) Such written notice shall be sent/distributed to the nonmember either:

(1) ~~At least 30 days prior to collection of the agency fee, after which the exclusive representative shall place those fees subject to objection in escrow, pursuant to Section 32995 of these regulations; or~~

(2) Concurrent with the initial agency fee collection **provided escrow requirements in Section 32995 are met;** or

(3) In the case of public school employees, where the agency fee year covers the traditional school year, on or before October 15 of the school year, provided escrow requirements in Section 32995 are met.

~~provided however, that all agency fees so noticed shall be held in escrow in toto until all objectors are identified. Thereafter, only the agency fees for agency fee objectors shall be held in escrow, pursuant to Section 32995 of these regulations.~~

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; **Harik v. California Teachers Association** (9th Cir. 2003) 326 F.3d 1042, **Grunwald v. San Bernardino Unified School District** (9th Cir. 1990) 994 F.2d 1370, *cert. denied*, 510 U.S. 964 (1993), and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.